

## **CHAPTER 4-28**

### **NORTH DAKOTA STATE WHEAT COMMISSION**

**4-28-01. Legislative intent.** The public policy of the state is declared to be that to foster, promote, and protect opportunities for economic security, individual rights and enterprise, the development of the natural resources of the state, and the health, prosperity, and general welfare of all of the people of the state, the greater development, more effective utilization and better marketing of wheat produced in the state involves and concerns a public purpose, the accomplishment of which among other things, requires and demands the establishment of a state wheat commission for the purpose and with the objective of stabilizing and improving the agricultural economy of the state.

The provisions of this chapter must not be construed to abrogate or limit in any way the rights, powers, duties, and functions of the state department of agriculture or any other agency of the state but are supplementary thereto and in aid and cooperation therewith; nor may such provisions be construed to authorize the state wheat commission to engage in competitive business enterprises, it being the intent and purpose of this chapter that the commission shall promote, aid, and develop the orderly marketing and processing of North Dakota wheat.

#### **4-28-02. Definitions.**

1. "Commercial channels" means the sale of wheat for any use, when sold by the producer to any commercial buyer, dealer, processor, cooperative, or to any person, firm, corporation, limited liability company, association, or partnership who resells any wheat or product produced therefrom.
2. "Commission" means the North Dakota state wheat commission.
3. The term "final settlement" means the date the wheat upon which a loan was obtained is sold to the elevator or to a private person or is assigned or transferred to an agency of the United States government; or the date upon which the payment for the wheat is made in instances when wheat is sold but payments are deferred.
4. "First purchaser" means any person, firm, corporation, association, partnership, agent, or broker buying, accepting for sale, or otherwise acquiring, after harvest, the property in or to wheat from the grower and includes a mortgagee, pledgee, lienor, or other claimant having a claim against the producer, where the actual or constructive possession of wheat is taken as part payment or in satisfaction of such mortgage, pledge, lien, or claim.
5. "Producer" means any landowner or tenant engaged in growing wheat and receiving, in such capacity, any portion of the crop produced.
6. "Sale" includes any pledge or mortgage of wheat, after harvest, to any person, firm, corporation, limited liability company, association, or partnership.
7. "Wheat" includes all varieties of hard red spring wheat, durum, and winter wheats.

#### **4-28-03. Wheat commission - Members.**

1. The North Dakota state wheat commission consists of seven members. One member must be appointed or elected from each of the districts of the state established by this chapter and one member must be appointed or elected from the state at large. Each member, except the member from the state at large, must be a resident of and a qualified elector in the district the member represents and must have farming operations in the district. The member from the state at large must have similar qualifications except as limited by district lines. An individual is not eligible to be a member of the wheat commission if that individual requested a

refund under section 4-28-07 during the twelve-month period before the date on which the term sought by the individual would commence. This ineligibility does not apply to an individual who requested a refund because of an overpayment, as provided in subdivision c of subsection 2 of section 4-28-07. Each member of the wheat commission must be actively engaged in the production of wheat. A member of the wheat commission who elects not to plant wheat for one growing cycle may continue to serve on the commission if the member continues to be actively involved in farming. If a member elects not to plant wheat for more than one growing cycle, the member is deemed to have resigned and the commission shall declare the member's office vacant. A member of the wheat commission is not eligible to receive a refund under section 4-28-07; however, a member may request a refund because of an overpayment, as provided in subdivision c of subsection 2 of section 4-28-07. The commission may declare a member's position vacant if the member fails to attend two consecutive commission meetings.

2. Not more than sixty days prior to expiration of the term of the member from the state at large, a nominating committee consisting of the agriculture commissioner, the president of the North Dakota crop improvement association, the director of the North Dakota agricultural experiment station, the director of the North Dakota state university extension service, the president of the North Dakota farm bureau, the president of the North Dakota farmers union, the president of the North Dakota grain dealers association, the president of the North Dakota grain growers association, and an individual who is a resident of this state and a member of the United States durum growers association, or their duly authorized representatives, shall submit to the governor a list of three names and within sixty days after expiration of the term the governor shall appoint, from the nominees so named, the member at large to the commission.
3. Each member of the commission shall hold office for a term of four years and until the member's successor has been selected and has qualified except that the commissioners elected and serving from the first and fourth districts shall hold office for terms ending on June 30, 1984; the commissioners elected and serving from the second and fifth districts shall hold office for terms ending on June 30, 1985; and the commissioners elected and serving from the third and sixth districts shall hold office for terms ending on June 30, 1982; and the commissioner appointed and serving as the state at large member shall hold office for a term ending on June 30, 1983. No producer is entitled to serve more than three terms.
4. At least sixty days prior to the expiration of the term of office of a commissioner representing any district, a meeting of producers must be held in each county in the district for the purpose of electing a county representative. The county agent shall call such meeting by publishing notice in the official newspaper of the county for two successive weeks, the last publication to be not less than five nor more than ten days prior to the meeting. The meeting must be held at a central location within the county and must be called to order by the county agent. The county agent, in cooperation with the cooperative extension service, shall conduct all elections under this section in each county in the manner the county agent deems fair and reasonable, except that a producer may vote only in the producer's county of residence. Votes must be canvassed by the county agent and certified by the county agent with the name and post-office address of the elected county representative to the director of the North Dakota state university extension service who shall thereupon, as expeditiously as possible, call a meeting of the county representatives of the district. Notice of such meeting must be sent to each county representative by registered or certified mail not less than five days prior to the meeting which must be held at a central location within the district. At such district meeting, the county representatives shall elect one of their number as the district member of the commission. The ballots at such meeting must be canvassed by the North Dakota state university extension service and the result of election certified to the governor by the director. To be eligible to hold the position of county

representative, an individual must be actively engaged in the production of wheat. A county representative who elects not to plant wheat for one growing cycle may continue to serve as a county representative if the individual continues to be actively involved in farming. If a county representative elects not to plant wheat for more than one growing cycle, the member is deemed to have resigned and the commission shall declare the member's position vacant. Additional meetings of county representatives may be called by the state wheat commission for the purpose of promoting its programs. All expenses of all such meetings and elections must be paid from commission funds. County representatives must be reimbursed for expenses necessarily incurred in attending meetings and performing other official duties on the same basis as other state officers.

5. Any vacancy occurring on the commission other than by expiration of term of office must be filled by the county representatives who shall elect one of their number as the district member of the commission for the remainder of the unexpired term. If the vacancy is from the state at large, appointment must be made from three nominations submitted by the nominating committee as in the case of the original appointment.

**4-28-04. State wheat commission districts.** For the purpose of this chapter, the state is hereby divided into the following districts:

1. State wheat commission district number one consists of the counties of Golden Valley, Billings, Dunn, Mercer, Oliver, Stark, Morton, Slope, Hettinger, Grant, Sioux, Bowman, and Adams.
2. State wheat commission district number two consists of the counties of Divide, Burke, Renville, Williams, Mountrail, Ward, and McKenzie.
3. State wheat commission district number three consists of the counties of McLean, Sheridan, Wells, Eddy, Burleigh, Kidder, Stutsman, Foster, Emmons, Logan, and McIntosh.
4. State wheat commission district number four consists of the counties of Bottineau, Rolette, Towner, McHenry, Pierce, Benson, and Ramsey.
5. State wheat commission district number five consists of the counties of Griggs, Steele, Traill, Barnes, Cass, LaMoure, Dickey, Ransom, Sargent, and Richland.
6. State wheat commission district number six consists of the counties of Cavalier, Pembina, Walsh, Nelson, and Grand Forks.

**4-28-05. Wheat commission - Meeting - Expenses - Legal adviser.** Upon call of the governor, the commission shall first meet and organize by electing from the membership a chairman and vice chairman, who shall hold office for one year and until their successors are elected and have qualified. Thereafter the commission shall meet at least once every calendar quarter at such times and places as determined by the commission and may meet in special meetings upon such call and notice as prescribed by rules adopted by the commission. The commission shall determine the amount of compensation payable to each member of the commission. The amount payable may not exceed seventy-five dollars per day plus reimbursement of expenses as provided by law for state officers, while attending meetings or performing other official duties directed by the commission. The attorney general shall act as legal adviser to the commission or designate an assistant for that purpose and within the limit of the funds available to the commission it may employ other counsel to advise and represent the commission in its affairs and proceedings.

**4-28-06. Wheat commission - Duties and powers.** In the administration of this chapter, the commission has the following powers, authority, and duties:

1. To foster and promote programs aimed at increasing the sale, utilization, and development of wheat, both at home and abroad.
2. To publish and disseminate reliable information on the value of wheat and wheat products for any purpose for which they are valuable and useful to both processor and consumer.
3. To search for and promote new uses of wheat and wheat products.
4. To contract and cooperate with any person, firm, corporation, limited liability company, or association, or with any local, state, or federal department or agency for executing or carrying on a program or programs of research, education, and publicity.
5. To lease, purchase, own, equip, maintain, and operate a commission office.
6. To appoint, employ, bond, discharge, fix the compensation and prescribe the duties of such administrative, clerical, technical and other personnel, employees, and agents as it may deem necessary to conduct the business and affairs of the commission.
7. To accept donations of funds, property, and services or other assistance, financial or otherwise, from federal, state, and other public or private sources for the purpose of aiding and promoting the work and objectives of the commission, depositing all funds so received in the state wheat commission fund in the state treasury.
8. To provide market maintenance and development services, utilization research, transportation research, and education.
9. To address trade and domestic issues.
10. To seek improvement in the export quality of wheat.
11. To exercise all express and implied rights, powers, and authority that may be necessary to perform and carry out the expressed purposes of this chapter and all of the purposes reasonably implied incidentally thereto or lawfully connected therewith and to adopt, rescind, modify, and amend all necessary and proper orders, resolutions, rules, and regulations for the procedure and exercise of its powers and the performance of its duties.
12. To prosecute in the name of the state of North Dakota any suit or action to enforce collection or assure payment of the tax or assessment authorized by the provisions of this chapter, and to sue and be sued in the name of the commission.
13. To engage in any other related activities.

**4-28-07. (Repealed effective July 1, 2009) Wheat tax levy.**

1. a. A tax of fifteen mills per bushel [35.24 liters] by weight must be levied and imposed upon all wheat grown in this state, delivered into this state, or sold through commercial channels to a first purchaser in this state.
- b. The tax must be levied and assessed at the time of sale and deducted by the purchaser from the price paid, or in the case of a lien, pledge, or mortgage, deducted from the proceeds of the loan or claim secured, subject to adjustment at the time of settlement in the event the number of bushels [liters] is not accurately determined at the time of the lien, pledge, or mortgage.

- c. At the time of sale, the first purchaser in this state shall issue and deliver to the producer or seller a record of the transaction in the manner prescribed by the commission.
2.
  - a. Any producer who sells wheat to a first purchaser in this state and who is subject to the deduction provided in this chapter, within sixty days following the deduction or final settlement, may make application by personal letter to the wheat commission for a refund application blank.
  - b. Upon the return of the blank, properly executed by the producer, accompanied by a record of the deduction by the purchaser, the producer must be refunded the net amount of the deduction collected.
  - c. If no request for refund has been made within the period prescribed above, then the producer is presumed to have agreed to the deduction. However, a producer, for any reason, having paid the tax more than once on the same wheat, upon furnishing proof of this to the commission, is entitled to a refund of the overpayment.
3. The commission, to inform the producer, shall develop and disseminate information and instructions relating to the purpose of the wheat tax and manner in which refunds may be claimed and to this extent shall cooperate with governmental agencies, state and federal, and private businesses engaged in the purchase of wheat.
4. The commission shall expend an amount at least equal to that raised by two mills of the levy provided for in this section to contract for activities related to domestic wheat policy issues, wheat production, promotion, and sales. The contracts may be with no more than two trade associations that are incorporated in this state and which have as their primary purpose the representation of wheat producers. The contracts must require that any trade association receiving money under this section pay from that money all dues required as a condition of the trade association's membership in any national trade association. The contracts also must prohibit any trade association receiving money under this section from eliminating any dues required as a condition of membership in that trade association or from reducing such dues below the amount required for membership as of January 1, 2005.
5. The commission shall expend an amount at least equal to that raised by three mills of the levy provided for in this section to pay any debts for legal services incurred by the commission, until the debts for legal services are paid in full.
6. When the wheat commission presents the report required by section 4-24-10, the commission shall present a separate report detailing the nature and extent of the commission's efforts to address trade and domestic policy issues. The commission may invite other entities with which it has contracted to assist in the presentations.
7. At the time the wheat commission presents the report required by section 4-24-10, each trade association with which the wheat commission has contracted under subsection 4 also shall present a report detailing all activities in which the trade association engaged under the provisions of the contract.

**4-28-07.1. (Effective after June 30, 2009) Wheat tax levy.**

1.
  - a. A tax of twelve mills per bushel [35.24 liters] by weight must be levied and imposed upon all wheat grown in this state, delivered into this state, or sold through commercial channels to a first purchaser in this state.
  - b. The tax must be levied and assessed at the time of sale and deducted by the purchaser from the price paid, or in the case of a lien, pledge, or mortgage,

deducted from the proceeds of the loan or claim secured, subject to adjustment at the time of settlement in the event the number of bushels [liters] is not accurately determined at the time of the lien, pledge, or mortgage.

- c. At the time of sale, the first purchaser in this state shall issue and deliver to the producer or seller a record of the transaction in the manner prescribed by the commission.
2.
  - a. Any producer who sells wheat to a first purchaser in this state and who is subject to the deduction provided for in this chapter, within sixty days following the deduction or final settlement, may make application by personal letter to the wheat commission for a refund application blank.
  - b. Upon the return of the blank, properly executed by the producer, accompanied by a record of the deduction by the purchaser, the producer must be refunded the net amount of the deduction collected.
  - c. If no request for refund has been made within the period prescribed in this subsection, the producer is presumed to have agreed to the deduction. A producer that, for any reason, has paid the tax more than once on the same wheat, upon furnishing proof of that payment to the commission, is entitled to a refund of the overpayment.
3. To inform the producer, the commission shall develop and disseminate information and instructions relating to the purpose of the wheat tax and manner in which refunds may be claimed and to this extent shall cooperate with state and federal agencies and private businesses engaged in the purchase of wheat.
4. The commission shall expend an amount at least equal to that raised by two mills of the levy provided for in this section to contract for activities related to domestic wheat policy issues, wheat production, promotion, and sales. The contracts may be with no more than two trade associations that are incorporated in this state and which have as their primary purpose the representation of wheat producers. The contracts must require that any trade association receiving money under this section pay from the money all dues required as a condition of the trade association's membership in any national trade association. The contracts also must prohibit any trade association receiving money under this section from eliminating any dues required as a condition of membership in that trade association or from reducing such dues below the amount required for membership as of January 1, 2005.
5. When the wheat commission presents the report required by section 4-24-10, the commission shall present a separate report detailing the nature and extent of the commission's efforts to address trade and domestic policy issues. The commission may invite other entities with which it has contracted to assist in the presentations.
6. At the time the wheat commission presents the report required by section 4-24-10, each trade association with which the wheat commission has contracted under subsection 4 also shall present a report detailing all activities in which the trade association engaged under the provisions of the contract.

**4-28-08. State wheat commission fund - Continuing appropriation.** Each first purchaser shall make quarterly reports and returns to the commission, on or before the twentieth day of the month next succeeding each calendar quarterly period, commencing with the calendar quarter ending September 30, 1995. The commission shall prescribe the forms to be used. With each report and return, the first purchaser shall remit to the commission, in the form of a remittance payable to the state treasurer, the tax due. The commission shall transmit all such payments to the state treasurer to be deposited in the state treasury to the credit of a special revolving fund known as the "state wheat commission fund". All money in the state wheat commission fund is appropriated on a continuing basis to the commission for carrying out the

purposes of this chapter. Expenditures from the fund may be made upon vouchers duly approved by the commission to carry out this chapter. Regular audits of the commission's accounts must be conducted in accordance with chapter 54-10.

**4-28-09. Penalty.** Any person violating any of the provisions of this chapter is guilty of a class B misdemeanor.